Lee Yew Seng & Ors v Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-01(NCVC)(A)-177–04 OF 2023
AZIZAH NAWAWI, SEE MEE CHUN AND MOHAMED ZAINI MAZLAN JJCA
30 SEPTEMBER 2024

Land Law — Acquisition of land — Compensation — Delay in payment of compensation sum — Compensation amount and interest deposited with High Court — Whether delayed payment breached ss 29 and 8(4) of Land Acquisition Act 1960 — Whether heirs of land owner entitled to interest and compensation deposited into court 20 years ago — Whether land acquisition null and void

The appellants were the heirs of one Lee Yee Leong ('LYL'), who owned a piece of land ('the said land'). LYL passed away on 15 February 2011. In 1976, the said land was scheduled for acquisition for the purpose of 'relocating landowners affected by the Sewerage and Sewage Disposal Plan', as stated in Form D. Form E was then served to LYL to inform him about the inquiry regarding the scheduled land acquisition. However, LYL insisted that he would not accept any monetary compensation in exchange for the land that was compulsorily acquired. Instead, LYL wanted a piece of land with similar characteristics and value as a fair exchange. Through Form K (notice that land had been acquired) issued on 3 December 1979, LYL was informed about the acquisition of the land. Through Form G (written offer of compensation), LYL was offered compensation amounting to RM168,750 in exchange for the land that was compulsorily acquired by the respondent. Following the issuance of Form H, LYL promptly rejected the offer but did not raise any objections regarding the adequacy of the offered compensation. Subsequently, on 2 August 2001, a compensation amounting to RM203,119.52 (principal and 6% interest) was deposited with the High Court in accordance with a court order. The appellants became aware of the compensation being deposited in the High Court around April 2003. However, after nearly 20 years, in 2022, the appellants initiated this action seeking to nullify the acquisition and/or to claim higher compensation through originating summons ('OS'). In dismissing the OS, the High Court ordered that: (a) the appellants were entitled to interest on the compensation amount of RM203,119.52 that was deposited with the High Court; and (b) the acquisition of the said land through Form D was valid. Hence, the present appeal. The issues that arose for determination were: (i) whether the delayed payment of compensation breached s 29 Land Acquisition Act 1960 ('the LAA') and invalidated the land acquisition; (ii) whether the delayed payment breached sub-s 8(4)(e) of the

LAA rendered the land acquisition null and void; and (iii) whether trial judge erred in making an order against the respondent for late payment charges.

Held, dismissing the appeal:

(1) The issue of delay under s 29 of the LAA was not a pleaded case of the appellants. From the intitulement of the originating summons, the appellant had pleaded s 8 of the LAA, not s 29. Therefore, since the parties were bound by their pleaded case, the appellant's reliance on s 29 of the LAA was not an issue for consideration before the court (see paras 20 & 26).

(2) The acquisition of the land was conducted in 1976, before the amendment to sub-s 8(4), which came into effect in 1983 vide *Gazette* notification dated 3 November 1983. Subsection 8(4) did not have a retrospective effect on acquisitions made before the amendment in 1983. Therefore, the acquisition of the said land was lawful and procedurally correct, and that the issuance of Form G three years after the date of Form D did not invalidate, the acquisition of the said land (see paras 29 & 31).

(3) Where there had been a delay in the payment of the compensation, including payment into court, the former owner of the acquired land was entitled to late payment charges under s 32 of the LAA . It was for this reason that the judge had made an order for the payment of late charges because of the delay of the respondent in depositing the compensation sum into court. As such, the judge did not commit an error of law when she made an order against the respondent for late payment charges (see paras 39–40)

[Bahasa Malaysia summary

Perayu-perayu adalah waris seorang Lee Yee Leong ('LYL'), yang memiliki sekeping tanah ('tanah tersebut'). LYL meninggal dunia pada 15 Februari 2011. Pada tahun 1976, tanah tersebut telah dijadualkan untuk diambil alih bagi tujuan 'menempatkan semula pemilik tanah yang terjejas oleh Pelan Pembetungan dan Rawatan Kumbahan', seperti yang dinyatakan dalam Borang D. Borang E kemudiannya disampaikan kepada LYL untuk memaklumkan beliau mengenai siasatan berhubung pengambilan tanah berjadual tersebut. Bagaimanapun, LYL menegaskan bahawa beliau tidak akan menerima sebarang pampasan kewangan sebagai balasan untuk tanah yang telah diambilalih secara wajib. Sebaliknya, LYL mahukan sekeping tanah dengan ciri dan nilai yang sama sebagai balasan adil. Melalui Borang K (notis bahawa tanah telah diambilalih) yang dikeluarkan pada 3 Disember 1979, LYL telah dimaklumkan mengenai pengambilalihan tanah tersebut. Melalui Borang G (tawaran pampasan bertulis), LYL ditawarkan pampasan berjumlah RM168,750 sebagai balasan kepada tanah yang diambilalih secara wajib oleh responden. Lanjutan daripada pengeluaran Borang H, LYL dengan serta-merta

menolak tawaran itu tetapi tidak membangkitkan sebarang bantahan berhubung kecukupan pampasan yang ditawarkan. Selepas itu, pada 2 Ogos 2001, pampasan berjumlah RM203,119.52 (pokok dan faedah 6%) telah didepositkan kepada Mahkamah Tinggi mengikut perintah mahkamah. Perayu-perayu menyedari pampasan telah didepositkan di Mahkamah Tinggi sekitar April 2003.Walau bagaimanapun, selepas hampir 20 tahun, pada 2022, perayu-perayu memulakan tindakan ini bertujuan untuk membatalkan pengambilalihan dan/atau menuntut pampasan yang lebih tinggi melalui saman pemula ('SP'). Dalam menolak SP, Mahkamah Tinggi memerintahkan bahawa: (a) perayu berhak mendapat faedah ke atas jumlah pampasan sebanyak RM203,119.52 yang telah didepositkan kepada Mahkamah Tinggi; dan (b) pengambilalihan tanah tersebut melalui Borang D adalah sah. Oleh itu, rayuan semasa. Isu-isu yang timbul untuk penentuan adalah: (i) sama ada pembayaran pampasan yang tertunda melanggar s 29 Akta Pengambilan Tanah 1960 ('APT') dan membatalkan pengambilalihan tanah; (ii) sama ada pembayaran tertunda melanggar sub-s 8(4)(e) APT menjadikan pengambilalihan tanah itu terbatal dan tidak sah; dan (iii) sama ada hakim perbicaraan terkhilaf membuat perintah terhadap responden untuk caj bayaran lewat.

Diputuskan, menolak rayuan:

(1) Isu kelewatan di bawah s 29 APT bukanlah kes yang diplidkan oleh perayu. Daripada tajuk saman pemula, perayu telah memplidkan s 8 APT, bukan s 29. Oleh itu, memandangkan pihak-pihak terikat dengan kes yang diplidkan mereka, kebegantungan perayu pada s 29 APT bukanlah satu isu untuk dipertimbangkan dihadapan mahkamah (lihat perenggan 20 & 26).

(2) Pengambilalihan tanah itu telah dijalankan pada tahun 1976, sebelum pindaan kepada sub-s 8(4), yang berkuat kuasa pada tahun 1983 melalui pemberitahuan Warta bertarikh 3 November 1983. Subseksyen 8(4) tidak mempunyai kesan retrospektif ke atas pengambilalihan yang dibuat sebelum pindaan pada tahun 1983. Oleh itu, pengambilalihan tanah tersebut adalah sah dan mengikut prosedur yang betul, dan bahawa pengeluaran Borang G tiga tahun selepas tarikh Borang D tidak membatalkan, pengambilalihan tanah tersebut (lihat perenggan 29 & 31).

(3) Jika terdapat kelewatan dalam pembayaran pampasan, termasuk pembayaran ke mahkamah, bekas pemilik tanah yang diambilalih itu berhak menerima caj pembayaran lewat di bawah s 32 APT. Atas sebab inilah hakim telah membuat perintah caj pembayaran lewat kerana kelewatan responden memasukkan wang pampasan ke mahkamah. Oleh itu, hakim tidak melakukan kekhilafan undang-undang apabila beliau

membuat perintah terhadap responden untuk caj bayaran lewat (lihat perenggan 39–40).]

Cases referred to

Amitabha Guha (as beneficiary for the estate of Madhabendra Mohan Guha) v Pentadbir Tanah Daerah Hulu Langat [2021] 4 MLJ 1; [2021] 3 CLJ 1, FC (refd)

Arena Tegar Sdn Bhd v Pentadbir Tanah Daerah Johor Bahru & Anor [2017] MLJU 859; [2017] 9 CLJ 77, HC (folld)

Aseambankers Malaysia Bhd & Ors v Shencourt Sdn Bhd & Anor [2014] 4 MLJ 619; [2014] 2 CLJ 773, CA (refd)

Bungsar Hill Holdings Sdn Bhd v Damansara Realty Bhd [2019] MLJU 222; [2019] 4 CLJ 429, FC (refd)

Ismail bin Bakar & Ors v Director of Lands and Mines, Kedah Darul Aman [2011] 5 MLJ 197; [2010] 9 CLJ 810, CA (refd)

Janagi v Ong Boon Kiat [1971] 2 MLJ 196; [1971] CLJU 42; [1971] 1 LNS 42 (refd)

Lee Ing Chin @ Lee Teck Seng & Ors v Gan Yook Chin & Anor [2003] 2 MLJ 97, CA (refd)

Pacific Forest Industries Sdn Bhd & Anor v Lin Wen-Chih & Anor [2009] 6 MLJ 293; [2009] 6 CLJ 430, FC (refd)

Pemungut Hasil Tanah Daerah Barat Daya, Penang v Kam Gin Paik & Ors [1986] 1 MLJ 362; [1986] 1 CLJ 283; [1986] CLJ Rep 33, PC (refd)

Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v Ong Gaik Kee [1983] 2 MLJ 35; [1983] CLJU 14; [1983] 1 LNS 14, FC (refd)

Pemungut Hasil Tanah, Kuantan v Oriental Rubber & Palmoil Sdn Bhd [1986] 1 MLJ 39; [1985] CLJU 127; [1985] 1 LNS 127, SC (refd)

Projek Lebuh Raya Utara-Selatan Sdn Bhd v Kim Seng Enterprise (Kedah) Sdn Bhd [2013] 5 MLJ 360; [2013] 6 CLJ 958, CA (refd)

RHB Bank Bhd (substituting Kwong Yik Bank Bhd) v Kwan Chew Holdings Sdn Bhd [2010] 2 MLJ 188; [2010] 1 CLJ 665, FC (refd)

Legislation referred to

Land Acquisition Act 1960 ss 8, 8(4), 29, 30, 31, 32, 32A, Forms D, E, K, G, H, I
Federal Constitution art 13
Rules of Court 2012 O 7 r 2(1A)

Appeal from: *Lee Yew Seng dan lain-lain lwn Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur* [2023] MLJU 1152 (High Court, Kuala Lumpur)

Chan Kheng Hoe (with Rachel Lim Han Ying and Ng Zong Hui) (Chong + Kheng Hoe) for the appellants.
Rohaiza bt Hamzah (Attorney-General) for the respondent.

Azizah Nawawi JCA:

INTRODUCTION

[1] This is an appeal against the decision of the learned High Court judge in dismissing the appellants' originating summons seeking the following prayers:

(a) a declaration that the declaration of intended acquisition (Form D) under the Land Acquisition Act 1960 ('the LAA 1960') dated 25 June 1976 for the acquisition of 3.75 acres of land held under Mukim Grant 1742 (formerly EMR 3294) Lot 2709 and Mukim Grant No 1 Lot 3275 Mukim Kuala Lumpur, Federal Territory ('the said land') is null and void;

(b) that a valuation be determined by this honourable court after taking into account an independent valuation of the market value of the said land on the basis of vacant land subject to the existing title conditions to be carried out by a valuer appointed by this court;

(c) that the costs for obtaining the independent valuation be paid by the defendant/respondent;

(d) that the defendant/respondent pays the plaintiffs/appellants the value determined in para (b) above;

(e) that interest at the rate of 5%pa on the amount determined in para (b) from the date of 25 June 1976 until full settlement; and

(f) that general damages be assessed by this honourable court and paid to the plaintiffs/appellants by the defendant/respondent for loss of use of the said land.

[2] The grounds of the application (in Bahasa Malaysia) are as follows:

1. Plaintif-plaintif Pertama hingga Ke-3 merupakan adik beradik, manakala Plaintif Ke-4 merupakan ibu mereka. Mereka merupakan pemilik berdaftar dan/atau pemilik yang sah bagi tanah yang dipegang di bawah Geran Mukim 1742 (dahulu EMR 3294) Lot 2709 dan Geran Mukim No. 1 Lot 3275 Mukim Kuala Lumpur, Wilayah Persekutuan yang sejumlah 3.75 ekar ('Tanah tersebut').

2. Plaintif-plaintif Pertama hingga Ke-3 telah mewarisi Tanah tersebut dari ayah mereka, Lee Yee Leong ('LYL').

3. Borang D (Perishtiharan Pengambilan yang Di-Cadangkan) di bawah Akta Pengambilan Tanah 1960 bertarikh 25.6.1976 telahpun dikeluarkan untuk pengambilan Tanah tersebut atas alasan 'untuk penempatan semula pemilik-pemilik tanah yang terlibat dengan Rancangan Sewerage and Sewage Disposal.'

4. Berdasarkan Seksyen 8 Akta Pengambilan Tanah 1960, pampasan pengambilan tanah harus diberikan dalam masa 2 tahun dari tarikh Borang D dikeluarkan,

namun Defendan telah gagal berbuat demikian.

5. LYL telah secara berterusan membayar cukai tanah bagi Tanah tersebut sehingga 1991 dimana beliau hanya menerima surat dari Defendan bertarikh 20.3.1992 yang memberitahu beliau cukai tanah bagi Tanah tersebut tidak boleh diterima atas alasan hakmilik Tanah tersebut telah pun diserahbalik kepada Defendan pada 17.7.1986.

6. Plaintif-Plaintif telah secara berterusan berunding dengan pelbagai pihak untuk menyelesaikan isu pengambilan Tanah tersebut yang tidak sah, tetapi tidak berjaya.

7. Tanah tersebut telah seterusnya dipindahmilik kepada Langkah Bakti Sdn Bhd, sebuah syarikat peribadi untuk pembinaan pangsapuri dan bukannya alasan yang sepertimana tertakluk dalam Borang D.

8. Namun begitu, Langkah Bakti Sdn Bhd hanya menjalankan pembangunan ke atas Tanah tersebut pada 1997.

9. Hakikatnya, Plaintif-Plaintif telah kehilangan tanah mereka kerana Tanah tersebut telah diambil tanpa mengikuti proses undang-undang yang ditetapkan dan tanpa pampasan.

10. Plaintif-plaintif mempunyai harapan sah (legitimate expectation) dengan pembayaran cukai tanah atas Tanah tersebut bahawa mereka tetap merupakan pemilik Tanah tersebut.

11. Dalam apa jua keadaan, Borang D telah luput dan pengambilan Tanah tersebut adalah terbatal dan tidak sah.

SALIENT FACTS

[3] The appellants in this case are the heirs of Lee Yee Leong ('LYL'), who owned a piece of land held under Mukim Grant 1742 (formerly known as EMR 3294) Lot 2709 and Mukim Grant No 1 Lot 3275 in Mukim Kuala Lumpur, Federal Territory of Kuala Lumpur, with an area of 3.5 acres ('the said land'). LYL passed away on 15 February 2011.

[4] In 1976, the said land was scheduled for acquisition through Federal *Gazette* No 3048 dated 15 July 1976 for the purpose of 'relocating landowners affected by the Sewerage and Sewage Disposal Plan', as stated in Form D dated 25 June 1976.

[5] Form E dated 11 October 1976 was served to LYL to inform him about the inquiry regarding the scheduled land acquisition that would be conducted on 8 November 1976.

[6] However, LYL insisted that he would not accept any monetary compensation in exchange for the land that was compulsorily acquired. Instead, LYL wanted a piece of land with similar characteristics and value as a

fair exchange because he intended to pass the land on to his heirs.

[7] Through Form K (Notice that Land has been Acquired) issued on 3 December 1979, LYL was informed about the acquisition of the land.

[8] Through Form G (Written Offer of Compensation) dated 28 January 1980, LYL was offered compensation amounting to RM168,750 in exchange for the land that was compulsorily acquired by the respondent.

[9] Following the issuance of Form H dated 28 January 1980, LYL promptly rejected the offer on 28 February 1980 but did not raise any objections regarding the adequacy of the offered compensation.

[10] Through a letter dated 2 August 2001, compensation amounting to RM203,119.52 (principal and 6% interest) was deposited with the court in accordance with the court order No S7–21–91 dated 5 September 2000.

[11] The appellants themselves stated in para 18 of the supporting affidavit that they only became aware of the compensation being deposited in the High Court around April 2003.

[12] However, after nearly 20 years, in 2022 (about more than 40 years after the acquisition of the said land), the appellants initiated this action seeking to nullify the acquisition and/or to claim higher compensation through this originating summons.

DECISION OF THE LEARNED JUDGE

[13] The appellants' originating summons was dismissed by the learned High Court judge. However, the learned judge made an order that the appellants are entitled to interest on the compensation amount of RM203,119.52 that was deposited with the High Court in accordance with the court order dated 5 September 2000 for Originating Summons No S7–21–91 of 2000, from the date the money was deposited in the High Court on 2 August 2001 until the date of the decision of the High Court, that is, 24 March 2023.

[14] The learned judge also made a finding that the acquisition of the said land through Form D is valid. The issue arose when LYL disagreed with the amount of compensation offered.

[15] On the application of s 8 of the LAA 1960, the learned judge made the following findings:

7) Berkaitan perenggan 15, 16, 17 afidavit sokongan plaintif-plaintif bahawa berdasarkan s 8 APT pampasan tanah (Dalam Borang G) harus diberikan dalam masa dua tahun dari tarikh Borang D dikeluarkan dan defendan telah gagal berbuat demikian. Plaintif-plaintif menyatakan bahawa Borang G hanya dikeluarkan pada 28 Januari 1980 iaitu selepas tiga tahun tujuh bulan dari Borang D dengan pampasan RM168,750. Plaintif-plaintif berhujah bahawa Borang D telah luput oleh itu pengambilan tanah tersebut adalah terbatal dan tidak sah ketika Borang G dikeluarkan. Plaintif-plaintif menyatakan mereka tidak menerima apa-apa bayaran pampasan dan pada tahun 2001 iaitu selepas 25 tahun selepas Borang D, defendan mendepositkan pampasan dengan Pendaftar Mahkamah Tinggi yang hanya diketahui oleh Plaintif-plaintif sekitar April 2003. (Rujukan eksh LYS8).

8) Adalah menjadi tegasan defendan bahawa pada ketika pengambilan tanah tersebut dilakukan pada tahun 1976 Borang D dikeluarkan, s 8 (4) APT tidak terpakai kerana seksyen tersebut belum lagi wujud. Peruntukan pampasan pengambilan tanah harus diberikan dalam tempoh dua tahun dari tarikh Borang D dikeluarkan hanya ditambah selepas pindaan terhadap APT 1960 pada 3 November 1983.

9) Mahkamah berpandangan bahawa s 8 (4) APT 1960 tidak wujud semasa pengambilan tanah tersebut dibuat. Pindaan hanya dibuat pada 3 November 1983. Tidak timbul isu had masa pampasan perlu dibuat dalam tempoh dua tahun. Disebabkan pindaan tersebut bukanlah berkuatkuasa secara retrospektif. (Rujukan dibuat kepada Warta Kerajaan Persekutuan bertarikh 3 November 1983 ditandakan sebagai eksh RMM7).

[16] On the issue that the appellants have a legitimate expectation that they remained the owners of the said land with the continued payments of the quit rents, the learned judge made the following findings:

16) Berkaitan hujahan plaintif-plaintif mereka mempunyai harapan sah (legitimate expectation) bahawa mereka tetap merupakan pemilik tanah tersebut dengan pembayaran cukai tanah atas tanah tersebut walaupun Borang D telah dikeluarkan sejak 1976, mahkamah dapati penyataan plaintif adalah penyataan kosong semata-mata. Dalam perenggan 22 afidavit sokong plaintif di lampiran 2 tidak mengemukakan apa-apa dokumen yang menunjukkan pembayaran cukai selama 15 tahun selepas Borang D dikeluarkan.

17) Mahkamah juga bersetuju dengan perenggan 21 afidavit jawapan defendan bahawa plaintif-plaintif telah dimaklumkan berkenaan pengambilan tanah tersebut melalui Borang D (Pengisytiharan Pengambilan Yang Dicadangkan), *Warta* Kerajaan No 3048, Borang I (Perakuan Segera), Borang K (Pemberitahu bahawa tanah telah diambil milik), Borang G (Pemberian Bertulis Pampasan), Borang H (Pemberitahuan Pemberian dan Tawaran Pampasan), dan hasil semakan hakmilik didapati kedua-dua lot tanah telah dipindahkan pada 31 Mei 1976. Pada setiap masa material plaintif-plaintif adalah berpengetahuan akan tanah tersebut telah diambil secara teratur dan sah mengikut APT 1960. (rujukan dibuat kepada eksh RMM10, RMM11 dan RMM12).

A OUR DECISION

[17] It is common ground that an appellate court will not intervene in the decisions of the lower courts unless the trial court was shown to be plainly wrong in arriving at its decision or where there had been no or insufficient judicial appreciation of the evidence. Judicial appreciation of evidence meant that a judge who was required to adjudicate upon a dispute must arrive at his decision on an issue of fact by assessing, weighing and, for good reasons, either accepting or rejecting the whole or any part of the evidence placed before him (see *Lee Ing Chin@Lee Teck Seng & Ors v Gan Yook Chin & Anor* [2003] 2 MLJ 97).

Whether the delayed payment breaches s 29 of the LAA 1960

[18] It is the submission of the appellants that s 29 of the LAA 1960 provides for payment to be made 'as soon as may be', and any delay in making the payment invalidates the land acquisition. Section 29 reads as follows:

> (1) After a notice of award in Form H, Form LC or Form R has been served in the manner prescribed by section 53 upon all interested persons the Land Administrator shall, *as soon as may be*, make payment of each amount awarded to the person entitled thereto unless:
>
> (a) there shall be no person competent to receive such payment;
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> (b) the person entitled thereto does not consent to receive the amount awarded; or
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> (c) there is a dispute as to the right or title of the person to receive the compensation, or as to the apportionment thereof.
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> (2) In the cases referred to in paragraph (1)(a), (b) and (c) the Land Administrator shall apply ex parte to the Registrar of the court in chambers, supported by affidavit, for an order to deposit the amount awarded into court and, notwithstanding anything to the contrary in the law for the time being in force relating to civil procedure, the Registrar shall have power to make such order ... (Emphasis added.)

[19] The appellants have relied on the decision of this court in *Ismail bin Bakar & Ors v Director of Lands and Mines, Kedah Darul Aman* [2011] 5 MLJ 197; [2010] 9 CLJ 810, where it was held that payment of compensation nine years after the acquisition was not reasonable and that the delay would be in contravention of both s 29 of the LAA 1960 as well as art 13 of the Federal Constitution. As such, the court held that the delay invalidates the acquisition.

[20] However, we are of the considered opinion that the issue of delay under s 29 of the LAA 1960 is not a pleaded case of the appellants. From the intitulement of the originating summons, the appellant had pleaded s 8 of the LAA 1960, not s 29. Order 7 r 2(1A) of the Rules of Court 2012 ('the ROC

2012') provides that every originating summons 'shall state in its intitulement any provisions of these Rules and any provision of any written law under which the Court is being moved'.

[21] In para (4) of the originating summons, the appellant has pleaded that:

> Berdasarkan Seksyen 8 Akta Pengambilan Tanah 1960, pampasan pengambilan tanah harus diberikan dalam masa 2 tahun dari Tarikh Borang D dikeluarkan, namun Defendan telah gagal berbuat demikian.

[22] In the affidavit in support affirmed by Lee Yew Seng on 8 February 2022, the appellants state as follows:

> C. *Alasan-alasan Saman Pemula Ini*
>
> *C1 Borang D adalah tidak sah dan terbatal*
>
> 15. Plaintif-plaintif dinasihati oleh Tetuan CKH dan sesungguhnya percaya bahawa berdasarkan seksyen 8 LAA 1960, pampasan pengambilan tanah (dalam Borang G) harus diberikan dalam masa dua tahun dari tarikh Borang D dikeluarkan, namun Defendan telah gagal berbuat demikian.
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> 16. Borang G (Pemberian Bertulis Pampasan) LAA 1960 hanya dikeluarkan pada 21.1.1980, iaitu selepas 3 tahun 7 bulan dari Borang D, dengan pampasan sejumlah RM168,750.00.
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> 17. Maka, saya dinasihati oleh Tetuan CKH dan sesungguhnya percaya bahawa Borang D telahpun luput dan oleh itu pengambilan tanah tersebut adalah terbatal dan tidak sah ketika Borang G dikeluarkan.
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> 18. Dalam apa pun jua keadaan, Plaintif-plaintif sehingga tarikh penfailan Afidavit ini tidak menerima apa-apa bayaran Pampasan tersebut. Pada tahun 2001, yakni 25 tahun selepas Borang D, Defendan mendepositkan pampas an dengan Pendaftar Mahkamah Tinggi yang hanya diketahui oleh Plaintif-plaintif sekitar April 2003.

[23] Therefore, from the intitulement and the grounds as pleaded in the originating summons as well as the affidavit in support, the pleaded case of the appellants in seeking to nullify the acquisition of the said land is premised on s 8, not s 29 of the LAA 1960. Indeed this is also the position taken by the respondent, where it is submitted in para (11) of the written submission of the respondent that:

> Perayu-Perayu memplidkan bahawa pengambilan tanah yang dijalankan oleh Responden pada tahun 1976 adalah tidak sah di sisi undang-undang kerana ia tidak mematuhi seksyen 8 Akta Pengambilan Tanah ('APT') disebabkan pampasan/award melalui Borang G perlu diserahkan dalam tempoh dua (2) tahun dari tarikh Borang D dikeluarkan oleh Responden.

[24] In *Projek Lebuh Raya Utara-Selatan Sdn Bhd v Kim Seng Enterprise (Kedah) Sdn Bhd* [2013] 5 MLJ 360; [2013] 6 CLJ 958, this court held as follows:

A [18] What this amount to is this. *That the court is not entitled and should not decide a suit on an issue which is not pleaded. In short, the trial of the suit must be confined to the pleadings* (*Yew Wan Leong v Lai Kok Chye* [1990] 2 MLJ 152; [1990] 1 CLJ Rep 330 (SC), at p 154) and the pleadings operate to effectively define and delimit with absolute clarity and precision the real matters in controversy between the parties. In B this way, the parties could prepare their respective cases and the court too will adjudicate on those issues and no more ... (Emphasis added.)

[25] In *RHB Bank Bhd (substituting Kwong Yik Bank Bhd) v Kwan Chew Holdings Sdn Bhd* [2010] 2 MLJ 188; [2010] 1 CLJ 665, the Federal Court C held as follows:

[33] Second, the proposition of the Court of Appeal was not even pleaded by the respondent. The respondent's cause of action against the appellant was for breach of contract. Nowhere in the respondent's pleading, expressly or by implication, can we detect a claim for breach of a joint venture agreement arising out of a fiduciary duty D placed upon the appellant in the capacity as principal of an agent. *It is a cardinal rule in civil litigation that the parties must abide by their pleadings* ...

...

[35] *On this, we would like to add that it is not the duty of the court to invent or create* E *a cause of action or defence under the guise of doing justice for the parties lest it be accused of being biased towards one against the other.* The parties should know best as to what they want and it is not for the court to pursue a cavalier approach to solving their dispute by inventing or creating cause or causes of action which were not pleaded in the first place. Such activism by the court must be discouraged otherwise the court F would be accused of making laws rather than applying them to a given set of facts. (Emphasis added.)

[26] Therefore, we are of the considered opinion that since the parties are bound by their pleaded case, the appellant's reliance on s 29 of the LAA 1960 G is not an issue for consideration before this court (see *Janagi v Ong Boon Kiat* [1971] 2 MLJ 196; [1971] CLJU 42; [1971] 1 LNS 42; *Pacific Forest Industries Sdn Bhd & Anor v Lin Wen-Chih & Anor* [2009] 6 MLJ 293; [2009] 6 CLJ 430; *Aseambankers Malaysia Bhd & Ors v Shencourt Sdn Bhd & Anor* [2014] 4 MLJ 619; [2014] 2 CLJ 773).

H

Whether the delayed payment breaches sub-s 8(4) of the LAA 1960

[27] The pleaded case of the appellants is that premised on sub-s 8(4) of the LAA 1960, compensation for land acquisition must be paid within two years I from the date Form D was issued. However, the respondent had failed to do so in the present appeal and therefore the acquisition of the said land is null and void.

[28] Subsection 8(4) of the LAA 1960 reads as follows:

(4) A declaration under subsection (1) shall lapse and cease to be of any effect on the expiry of two years after the date of its publication in the Gazette in so far as it relates to any land or part of any land in respect of which the Land Administrator has not made an award under subsection 14(1) within the said period of two years, and, accordingly, all proceedings already taken or being taken in consequence of such declaration in respect of such land or such part of the land shall terminate and be of no effect.

[29] We are of the considered opinion and we agree with the learned judge that sub-s 8(4) of the LAA 1960 does not apply retrospectively. The acquisition of the land was conducted in 1976, before the amendment to sub-s 8(4), which came into effect in 1983 vide *Gazette* notification dated 3 November 1983. We are of the considered opinion that sub-s 8(4) does not have a retrospective effect on acquisitions made before the amendment in 1983.

[30] We refer to the decision of our apex court in *Amitabha Guha (as beneficiary for the estate of Madhabendra Mohan Guha) v Pentadbir Tanah Daerah Hulu Langat* [2021] 4 MLJ 1; [2021] 3 CLJ 1, where question 6 before the Federal Court is whether statutory amendment that affect substantive right has retrospective effect. In answering question 6 in the negative, the Federal Court held as follows:

[67] *As a general rule, statutory amendments that affect substantive rights do not operate retrospectively.* First, the 2016 Amending Act did not expressly exclude the application of s 30(1)(b) of the Interpretation Acts which provides that the repeal of a written law in whole or in part shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed law. The Privy Council also expressed the view that '[a] *part from the interpretation Statutes, there is at common law a prima facie rule of construction that a statute should not be interpreted retrospectively so as to impair an existing right or obligation unless that result in unavoidable on the language used*' (see *Yew Bon Tew*, at p 2). That a retrospective operation should not be given to a statute to impair an existing right and that one should avoid a construction that inflicts a detriment was emphasised by the then Supreme Court in *National Land Finance Co-Operative Society Limited*, at p 106 (see also *Society of La Salle Brothers*, at paras [43] to [45]; *Tenaga Nasional Bhd v Kamarstone* at paras [6] to [71].

[68] It must be borne in mind that the LAA 1960 is a special enactment dealing with the fundamental right to property under art 13 of the Federal Constitution. As a general rule, such statutes should be construed strictly and any doubt should be resolved in favour of the landowner so as to give meaning to the constitutional protection of a person's right to his property (*Ee Chong Pang* at para [21]; *Sistem Ungkaran Lebuhraya Kajang Sdn B*; *Sistem Lingkaran Lebuhraya Kajang Sdn Bhd* at para [4]). Accordingly, we would answer question 6 in the negative. (Emphasis added.)

[31] Therefore, we find that the acquisition of the said land was lawful and procedurally correct, and that the issuance of Form G three years after the date of Form D does not invalidates the acquisition of the said land.

Late payment charges

[32] In any event, the legislature has clearly postulated that any delay under sub-s 8(4) of the LAA 1960 will have the dire consequence that such declaration for land acquisition 'shall terminate and be of no effect'.

[33] However, there is no similar provision in s 29 of the LAA 1960 that nullifies the acquisition of the affected land when there was delay in payment, whether due to failure of the land owner to accept the compensation or the delay of the land authority to pay the compensation sum into court pursuant to s 29 of the LAA 1960.

[34] The Court of Appeal in *Ismail Bakar & Ors v Director of Lands and Mines, Kedah Darul Aman* made a finding that non-compliance with s 29 of the LAA 1960 nullifies the land acquisition based on the cases of: (1) *Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v Ong Gaik Kee* [1983] 2 MLJ 35; [1983] CLJU 14; [1983] 1 LNS 14; and (2) *Pemungut Hasil Tanah Daerah Barat Daya, Penang v Kam Gin Paik & Ors* [1986] 1 MLJ 362; [1986] 1 CLJ 283; [1986] CLJ Rep 33. In para [20], the court held as follows:

> [20] In the present case, guided by the above authorities, in particular, *Ong Gaik Kee* and *Kam Gin Paik*, we hold that the nine year delay in paying the compensation is grossly unreasonable and hence is in contravention of s 29 of the Act and art 13 cl 1 of the Federal Constitution ...

[35] However, in *Ong Gaik Kee,* the delay is not on payment of the compensation under s 29, but the delay of holding the inquiry seven years after the declaration under s 8 of the LAA, which was published in the *Gazette* on 25 April 1974. Similarly, in *Kam Gin Paik*, there was a delay of seven years between the s 8 declaration and the notice of the inquiry issued by the Land Administrator to determine compensation. Both cases are not on delay in making the payment under s 29 of the LAA 1960, upon which the acquisition process has been completed.

[36] We also take note that the court in *Ismail Bakar & Ors v Director of Lands and Mines, Kedah Darul Aman* also referred to the Supreme Court decision *Pemungut Hasil Tanah, Kuantan v Oriental Rubber & Palmoil Sdn Bhd* [1986] 1 MLJ 39; [1985] CLJU 127; [1985] 1 LNS 127 where there was a delay of three and half years (3 1/2) between the notification under s 8 of the LAA and the date of the award. Despite making a finding that there was no reasonable explanation for the long delay, the Supreme Court set aside the

order of the High Court that quashed the inquiry and the award on the ground that the respondent (landowner) had failed to prove that he had suffered grave injustice as a result of the unreasonably long delay.

[37] In any event, ss 29 to 32A of the LAA 1960 deals with 'Payment of compensation or deposit in Court'. These provisions only apply after the acquisition process has been completed or concluded.

[38] Section 29 of the LAA 1960 is with regards to payment of compensation into court (see *Bungsar Hill Holdings Sdn Bhd v Damansara Realty Bhd* [2019] MLJU 222; [2019] 4 CLJ 429/para 57, whilst s 32 deals with late payment charges. The interplay between ss 29 and 32 can be gleaned from the decision of Justice Choo Kah Sing in *Arena Tegar Sdn Bhd v Pentadbir Tanah Daerah Johor Bahru & Anor* [2017] MLJU 859; [2017] 9 CLJ 77. Even though the issue in this case is on late payment charges under s 32, the learned judicial commissioner explained the interplay between ss 29 and 32 of theLAA 1960. His Lordship explained as follows:

> [22] Section 32 of the Act states as follows:
>
> 32 Late payment charges
>
> (1) When the amount of any compensation awarded under this Act in respect of any land is not paid or deposited on or before the due date, the Land Administrator shall pay the amount awarded with late payment charges thereon at the rate of eight percent per annum from the due date until the time of such payment or deposit.
>
> [23] The chief words in the aforementioned provision lie within the sentence '... the Land Administrator shall pay the amount awarded with late payment charges ...' The word 'shall' connote a statutory and obligatory duty. *In other words, the provision imposes on the land administrator a statutory duty to pay not just the amount awarded, but also to pay the late payment charges in the event either one of the two scenarios are applicable.*
>
> [24] The *first scenario* is when the land administrator fails to pay the compensation award to the entitled person on or before the due date. *The second scenario is when the land administrator fails to deposit the compensation award with the court on or before the due date*.
>
> [25] The meaning of 'due date' is explained in s 32(1C) of the Act which states as follows:
>
> (1C) In this section 'due date' in relation to any land means the date of taking possession of the land or a date three months after the service of a notice under section 16(1) *in respect of the land, whichever is the earlier.*
>
> [26] *When will the two scenarios mentioned earlier arise? The answer can be found in s 29 of the Act which states as follows*:
>
> 29 Payment of compensation or deposit in Court

A (1) After a notice of award in Form H has been served in the manner prescribed by section 53 upon all interested persons the Land Administrator shall, as soon as may be, make payment of each amount awarded to the person entitled thereto unless —

B (a) there shall be no person competent to receive such payment;

(b) the person entitled thereto does not consent to receive the amount awarded; or

(c) *there is a dispute as to the right or title of the person to receive the compensation, or as to the apportionment thereof.*

C (2) In the cases referred to in subsection (1)(a), (b) and (c) the Land Administrator shall apply ex parte to the Registrar of the Court in chambers, supported by affidavit, for an order to deposit the amount awarded into Court and, notwithstanding anything to the contrary in the law for the time being in force relating to civil procedure, the Registrar shall have power to make such order.

D [27] Section 29 of the Act explicitly states as soon as may be after the service of Form H, the payment of the amount awarded has to be made to the person entitled. The meaning of 'as soon as may be' has been lucidly explained in the decision of the E Court of Appeal in *Ismail bin Bakar & Ors v Director of Lands and Mines, Kedah Darul Aman* [2011] 5 MLJ 197; [2010] 9 CLJ 810.

[28] In the event the land administrator cannot determine who the entitled person is, then the land administrator is required under s 29(2) of the Act to apply to the registrar of the court to deposit the awarded amount with the court.

F [29] *This court observes that there is no time frame mentioned in the provision for the land administrator to apply to the court to deposit the awarded amount with the court. However, reading ss 29(2), 32(1) and 32(1C) together, it postulates a situation that the land administrator has to make the application and deposit the amount awarded into the court on or before the due date. In the event the land administrator fails to do so, late* G *payment charges shall be imposed on the land administrator.*

[30] ...

[31] ...

[32] It is the considered view of this court that when there is a dispute as to the right or title of the person to receive the compensation amount, the land administrator is H immediately obligated under s 29(2) of the act to apply to the registrar of the court to deposit the amount awarded with the court. Section 29(2) of the act states clearly that the land administrator shall apply ex parte to the registrar for an order to deposit the amount awarded into court.

I [33] On the present fact, the first defendant applied to the court to deposit the compensation amount on 30 December 2015, which was after the due date, ie, 18 November 2015. The first defendant only obtained the court order on 21 January 2016.

[34] The time from the date the first defendant was made aware of the dispute to the due date, which is between 15 September 2015 and 18 November 2015, was

approximately two months. It is the considered view of this court that there was ample time for the first defendant to make an application to the registrar of the court to deposit the compensation amount with the court before the due date.

[35] In the event the first defendant had made the application earlier, ie, right after being made aware of the dispute, the first defendant could have enough time to deposit the compensation amount on or before the due date. *The first defendant could have avoided late payment charges if the first defendant had taken swift action to comply with s 29(2) of the Act*. The first defendant only made the application on 30 December 2015, after the due date. This clearly shows that the first defendant did not take immediate action after being made aware of the dispute.

[36] The compensation amount was finally paid to the plaintiff on 24 June 2016. Therefore, the number of days of delay in the payment of the compensation amount between 18 November 2015 (due date) and 24 June 2016 (payment date) are 219 days in total.

[37] In *Ismail Bakar & Ors*, the Court of Appeal at p 208 states:

> ... it is clear that *under s 32 there is an automatic right to be paid late payment charges as long as there has been a delay in making compensation payment by the land administrator.* Under s 32 there is no necessity for the appellants [the landowner in the case] to make a claim for late payment charges. The entitlement to late payment charges is as of right and is immediate. (Emphasis added.)

[39] We agree with the analysis of Justice Choo Kah Sing in *Arena Tegar Sdn Bhd*. Therefore, we are of the considered opinion that where there has been delay in the payment of the compensation, including payment into court, the former owner of the acquired land is entitled to late payment charges under s 32 of the LAA 1960. It is for this reason that the learned judge has made an order for the payment of late charges because of the delay of the respondent in depositing the compensation sum into court.

[40] As such, we are of the considered opinion that the learned judge did not commit an error of law when she made an order against the respondent for late payment charges.

Payment of quit rent

[41] It is the submission of the appellants that the learned judge had failed to consider the pertinent evidence when concluding that there was no proof of continuous payments of the quit rent. This oversight led to her erroneous finding that the appellants had no legitimate expectation of retaining ownership of the said land.

[42] The appellant relied on the letter dated 17 April 1986, ten years after the acquisition, to show evidence indicating that the Land Office still recognised the appellants as the landowners. In the said letter, the appellants

were duly informed of the change in the particulars of the title, together with the instruction to pay quit rent according to the new title information.

[43] Added to that, there is also the letter dated 21 August 1986 from the Land Office seeking the payment of quit rent in accordance with the computerised system.

[44] Further, there was also the letter dated 19 February 1992, where LYL wrote to the Land Office to put on record that he tried to pay quit rent but was rejected.

[45] Lastly, there was a letter dated 20 March 1992 whereby the respondent had explained that the quit rent was rejected because the said lands had been surrendered back to the Land Office.

[46] It is therefore the submissions of the appellants that the above letters must surely point to the fact that quit rent had been paid all these times, save for the year 1992 when it was rejected.

[47] However, on the payment of the quit rent, the learned judge made a finding of fact that the appellants have failed to prove the alleged continuous payment of the quit rent for 15 years after Form D was issued. The learned judge made a finding of fact that the appellants' assertions on the said quit rent payments for years are mere rhetoric as there are just no documentary evidence to support such assertions. Surely there must be some documents to show alleged payments of the quit rents over so many years.

[48] Added to that, we are of the considered opinion and we agree with the learned judge findings that the LYL/appellants were informed about the land acquisition through Form D (declaration of proposed acquisition), *Government Gazette* No 3048, Form I (immediate certificate), Form K (notification of land acquisition), Form G (written compensation offer), and Form H (notification of award and compensation offer).

[49] In fact, the appellants' predecessor and original owner (LYL) had rejected the acquisition of the said land vide a letter dated 3 November 1996 (exh LYS4) where he states, inter alia, as follows:

> 7. In other words, the land in Pantai can be said to be an exchange for the land in Ulu Klang.
>
> ...

10. It is easy to sell the land but it is impossible to acquire another piece at such an ideal locality. If the City Council must acquire my land, then I can only pray that the City Council will give me back another piece nearby as a fair exchange, because I cannot accept any money.

[50] Added to that, LYS had signed *Borang* H (*Pemberitahu Pemberian dan Tawaran Pampasan*) dated 28 February 1980 (LYS6), where he had clearly stated that 'Saya tidak menerima tawaran di atas'. As such, LYS had the requisite knowledge about the acquisition of the said land and had rejected the offer of compensation. However, LYL did not raise any objection regarding the adequacy of the offered compensation.

[51] Further, from the land title, it showed that both lots have been transferred on 31 May 1976. Therefore, at all material times, we agree with the learned judge findings that the appellants were aware that the said land was acquired in a legal manner pursuant to the LAA 1960.

CONCLUSION

[52] For the reasons enumerated above, we find no merit in the appeal and the appeal is dismissed with costs. The decision of the learned judge is affirmed.

Appeal dismissed.

Reported by K Selvaraju